

## 1 HOUSE BILL NO. 282

2 INTRODUCED BY R. ERICKSON

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE BOARD OF ENVIRONMENTAL REVIEW TO  
5 ESTABLISH REQUIREMENTS FOR THE CAPTURE, TRANSPORTATION, AND STORAGE OF CARBON  
6 DIOXIDE OR THE OFFSETTING OF CARBON DIOXIDE AT COAL-FIRED ELECTRICAL GENERATION AND  
7 SYNTHETIC FUEL FACILITIES; AND AMENDING SECTION 75-2-211, MCA."

8  
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10  
11 **Section 1.** Section 75-2-211, MCA, is amended to read:

12 **"75-2-211. Permits for construction, installation, alteration, or use.** (1) The board shall by rule  
13 provide for the issuance, modification, suspension, revocation, and renewal of a permit issued under this part.

14 (2) (a) Except as provided in 75-1-208(4)(b), 75-2-234, and subsections (2)(b) and (2)(c) of this section,  
15 not later than 180 days before construction, installation, or alteration begins or as a condition of use of any  
16 machine, equipment, device, or facility that the board finds may directly or indirectly cause or contribute to air  
17 pollution or that is intended primarily to prevent or control the emission of air pollutants, the owner or operator  
18 shall file with the department the appropriate permit application on forms available from the department.

19 (b) Except as provided in subsection (2)(e), the owner or operator of an oil or gas well facility shall file  
20 the permit application with the department no later than ~~January 3, 2006,~~ or 60 days after the initial well  
21 completion date, ~~whichever is later.~~ For purposes of this section, the initial well completion date for an oil or gas  
22 well facility is:

23 (i) for an oil or gas well facility producing oil, the date when the first oil is produced through wellhead  
24 equipment into lease tanks from the ultimate producing interval after casing has been run; and

25 (ii) for an oil or gas well facility producing gas, the date when the oil or gas well facility is capable of  
26 producing gas through wellhead equipment from the ultimate producing interval after casing has been run.

27 (c) An owner or operator who complies with subsection (2)(b) may construct, install, or use equipment  
28 necessary to complete or operate an oil or gas well facility without a permit until the department's decision on the  
29 application is final. If the owner or operator does not comply with subsection (2)(b), the owner or operator may  
30 not operate the oil or gas well facility and is liable for a violation of this section for every day of construction,

1 installation, or operation of the facility.

2 (d) The board shall adopt rules establishing air emission control requirements applicable to an oil or gas  
3 well facility during the time from the initial well completion date until the department's decision on the application  
4 is final.

5 (e) The provisions of subsections (2)(b) and (2)(c) do not apply to an oil or gas well facility subject to the  
6 federal air permitting provisions of 42 U.S.C. 7475 or 7503.

7 (3) The permit program administered by the department pursuant to this section must include the  
8 following:

9 (a) requirements and procedures for permit applications, including standard application forms;

10 (b) requirements and procedures for submittal of information necessary to determine the location,  
11 quantity, and type of emissions;

12 (c) procedures for public notice and opportunity for comment or public hearing, as appropriate;

13 (d) procedures for providing notice and an opportunity for comment to contiguous states and federal  
14 agencies, as appropriate;

15 (e) requirements for inspection, monitoring, recordkeeping, and reporting;

16 (f) procedures for the transfer of permits;

17 (g) requirements and procedures for suspension, modification, and revocation of permits by the  
18 department;

19 (h) requirements and procedures for appropriate emission limitations and other requirements, including  
20 enforceable measures necessary to ensure compliance with those limitations and requirements;

21 (i) requirements and procedures for permit modification and amendment; ~~and~~

22 (j) requirements and procedures for issuing a single permit authorizing emissions from similar operations  
23 at multiple temporary locations, which permit may include conditions necessary to ensure compliance with the  
24 requirements of this chapter at all authorized locations and a requirement that the owner or operator notify the  
25 department in advance of each change in location; and

26 (k) for construction permit applications filed after [the effective date of this act] for coal-fired electrical  
27 generation facilities or synthetic fuel facilities, requirements for the capture of carbon dioxide at the site, the  
28 transportation of carbon dioxide, if necessary, and the permanent storage of carbon dioxide in a geologic  
29 formation or verification that 100% of the carbon dioxide emissions from the proposed facility will be offset.

30 (4) This section does not restrict the board's authority to adopt regulations providing for a single air

1 quality permit system.

2 (5) Department approval of an application to transfer a portable emission source from one location to  
3 another is exempt from the provisions of 75-1-201(1).

4 (6) The department may, for good cause shown, waive or shorten the time required for filing the  
5 appropriate applications.

6 (7) The department shall require that applications for permits be accompanied by any plans,  
7 specifications, and other information that it considers necessary.

8 (8) An application is not considered filed until the applicant has submitted all fees required under  
9 75-2-220 and all information and completed application forms required pursuant to subsections (2), (3), and (7)  
10 of this section. If the department fails to notify the applicant in writing within 30 days after the purported filing of  
11 an application that the application is incomplete and fails to list the reasons why the application is considered  
12 incomplete, the application is considered filed as of the date of the purported filing.

13 (9) (a) Except as provided in 75-1-205(4) and 75-1-208(4)(b), if an application for a permit requires the  
14 preparation of an environmental impact statement under the Montana Environmental Policy Act, Title 75, chapter  
15 1, parts 1 through 3, the department shall notify the applicant in writing of the approval or denial of the application:

16 (i) within 180 days after the department's receipt of a filed application, as provided in subsection (8), if  
17 the department prepares the environmental impact statement;

18 (ii) within 30 days after issuance of the final environmental impact statement by the lead agency if a state  
19 agency other than the department has been designated by the governor as lead agency for preparation of the  
20 environmental impact statement; or

21 (iii) if the application is for a machine, equipment, a device, or a facility at an operation that requires a  
22 permit under Title 82, chapter 4, part 1, 2, or 3, within 30 days of issuance of the final environmental impact  
23 statement in accordance with time requirements of Title 82, chapter 4, part 1, 2, or 3.

24 (b) If an application does not require the preparation of an environmental impact statement, is not subject  
25 to the provisions of 75-2-215, and is not subject to the federal air quality permitting provisions of 42 U.S.C. 7475,  
26 7503, or 7661, the department shall notify the applicant in writing within 60 days after its receipt of a filed  
27 application, as provided in subsection (8), of its approval or denial of the application, except as provided in  
28 subsection (14).

29 (c) If an application does not require the preparation of an environmental impact statement and is subject  
30 to the federal air permitting provisions of 42 U.S.C. 7475, 7503, or 7661, the department shall notify the applicant,

1 in writing, within 75 days after its receipt of a filed application, as provided in subsection (8), of its approval or  
2 denial of the application.

3 (d) Except as provided in subsection (9)(e), if an application does not require the preparation of an  
4 environmental impact statement and is subject to the provisions of 75-2-215, the department shall notify the  
5 applicant of its approval or denial of the application, in writing, within 75 days after its receipt of a filed application,  
6 as provided in subsection (8).

7 (e) If an application for a permit is for the construction, installation, alteration, or use of a source that is  
8 also required to obtain a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, the department shall  
9 prepare a single environmental review document pursuant to Title 75, chapter 1, for the permit required under  
10 this section and the license or permit required under 75-10-221 or 75-10-406 and act on the applications within  
11 the time period provided for in 75-2-215(3)(e).

12 (f) The time for notification may be extended for 30 days by written agreement of the department and  
13 the applicant. Additional 30-day extensions may be granted by the department upon the request of the applicant.  
14 Notification of approval or denial may be served personally or by certified mail on the applicant or the applicant's  
15 agent.

16 (g) Failure by the department to act in a timely manner does not constitute approval or denial of the  
17 application. This does not limit or abridge the right of any person to seek available judicial remedies to require  
18 the department to act in a timely manner.

19 (10) When the department approves or denies the application for a permit under this section, a person  
20 who is jointly or severally adversely affected by the department's decision may request a hearing before the  
21 board. The request for hearing must be filed within 15 days after the department renders its decision. An affidavit  
22 setting forth the grounds for the request must be filed within 30 days after the department renders its decision.  
23 The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to  
24 a hearing before the board under this subsection.

25 (11) (a) The department's decision on the application is not final until 15 days have elapsed from the date  
26 of the decision.

27 (b) The filing of a request for hearing does not stay the department's decision. However, the board may  
28 order a stay upon receipt of a petition and a finding, after notice and opportunity for hearing, that:

- 29 (i) the person requesting the stay is entitled to the relief demanded in the request for a hearing; or  
30 (ii) continuation of the permit during the appeal would produce great or irreparable injury to the person

1 requesting the stay.

2 (c) Upon granting a stay, the board may require a written undertaking to be given by the party requesting  
3 the stay for the payment of costs and damages incurred by the permit applicant and its employees if the board  
4 determines that the permit was properly issued. When requiring an undertaking, the board shall use the same  
5 procedures and limitations as are provided in 27-19-306(2) through (4) for undertakings on injunctions.

6 (12) The board shall provide, by rule, a period of 30 days in which the public may submit comments on  
7 draft air quality permits for applications that:

8 (a) are subject to the federal air quality permitting provisions of 42 U.S.C. 7475, 7503, or 7661;

9 (b) are subject to the requirements of 75-2-215; or

10 (c) require the preparation of an environmental impact statement.

11 (13) The board shall provide, by rule, a period of 15 days in which the public may submit comments on  
12 draft air quality permits not subject to subsection (12).

13 (14) The board shall provide, by rule, the basis upon which the department may extend by 15 days:

14 (a) the period as provided in subsection (13) in which the public may submit comments on draft air quality  
15 permits not subject to subsection (12); and

16 (b) the period for notifying an applicant of its final decision on approval or denial of an application, as  
17 provided in subsection (9)(b).

18 (15) (a) The board may adopt rules for issuance, modification, suspension, revocation, renewal, or  
19 creation of:

20 (i) general permits covering multiple similar sources; or

21 (ii) other permits covering multiple similar sources.

22 (b) Rules adopted pursuant to subsection (15)(a) may provide for construction and operation under the  
23 permit upon authorization by the department or upon notice to the department."

24 - END -